

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF	§	
BRUCE OAKLEY, INC. and JOHNSTON'S	§	
PORT 33 INC., OWNERS OF THE M/V	§	Case No. 19-CV-184-RAW
LEGACY, FOR EXONERATION FROM OR	§	
LIMITATION OF, LIABILITY	§	

ANSWER AND PROTECTIVE CLAIM

GEORGIA PACIFIC CONSUMER OPERATIONS LLC ("GPCO") files this Answer and Protective Claim pursuant to Admiralty Supplemental Rule F(5) in response to Petitioners BRUCE OAKLEY, INC. and JOHNSTON'S PORT 33 INC. ("Petitioners") Complaint for Exoneration from, or Limitation of, Liability ("Complaint").

ANSWER

First Affirmative Defense

Without waiving any other defenses, Petitioners' Complaint fails to state a claim for which relief can be granted. GPCO incorporates by reference herein the remaining content of its answer. Petitioners are not entitled to limit their liability under the Shipowner's Limitation of Liability Act because the acts or omissions that gave rise to the events at issue were within the privity or knowledge of Petitioners, including but not limited to the competency and training of LEGACY crewmembers, the available equipment aboard LEGACY for purposes of properly securing the barges at issue, and the failure to maintain control over the two barges after recapturing them following the first breakaway.

Answers to Specific Allegations

GPCO answers Petitioners' Complaint using the paragraph numbers contained therein as follows:

1. GPCO admits the allegations set forth in Complaint paragraph 1.
2. GPCO admits the allegations set forth in Complaint paragraph 2.
3. GPCO admits the allegations set forth in Complaint paragraph 3.

4. GPCO admits the allegations set forth in Complaint paragraph 4.
5. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 5. To the extent a response is required, denied.
6. GPCO admits the allegations set forth in Complaint paragraph 6, except denies that the two barges were properly secured to shore.
7. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 7. To the extent a response is required, denied.
8. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 8. To the extent a response is required, denied.
9. GPCO admits the allegations set forth in Complaint paragraph 9.
10. GPCO admits the allegations set forth in Complaint paragraph 10.
11. GPCO admits the allegations set forth in Complaint paragraph 11.
12. GPCO admits the allegations set forth in Complaint paragraph 12.
13. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 13. To the extent a response is required, denied.
14. GPCO admits the allegations set forth in Complaint paragraph 14, except denies that the two barges were properly secured to trees on the riverbank.
15. GPCO admits the allegations set forth in Complaint paragraph 15.
16. GPCO admits the allegations set forth in Complaint paragraph 16.
17. GPCO admits the allegations set forth in Complaint paragraph 17.
18. GPCO admits the allegations set forth in Complaint paragraph 18.
19. GPCO admits the allegations set forth in Complaint paragraph 19.
20. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 20. To the extent a response is required, denied.
21. GPCO admits the allegations set forth in Complaint paragraph 21.

22. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 22. To the extent a response is required, denied.
23. GPCO denies the allegations set forth in Complaint paragraph 23.
24. GPCO denies the allegations set forth in Complaint paragraph 24.
25. GPCO denies the allegations set forth in Complaint paragraph 25.
26. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 26. To the extent a response is required, denied.
27. GPCO is without sufficient information to admit or deny the allegations in Complaint paragraph 27. To the extent a response is required, denied.
28. GPCO denies the allegations set forth in Complaint paragraph 28.
29. Paragraph 29 of the Complaint requires no answer, but to the extent a response is required, denied.
30. GPCO admits the allegations set forth in Complaint paragraph 30.
31. GPCO incorporates by reference the foregoing answers in response to the allegations set forth in Complaint paragraph 31.
32. Petitioners' Prayer for Relief does not require an answer, but to the extent a response is required, denied.

Second Affirmative Defense

Without waiving any other defenses, the incident was caused by Petitioners' contributory negligence.

Third Affirmative Defense

Without waiving any other defenses, the incident was caused by M/V LEGACY and/or its crew's contributory negligence.

WHEREFORE, upon trial of this matter, GPCO respectfully requests that the relief requested by Petitioners be denied, and that Petitioners be held liable for all attendant damages incurred by GPCO as a result of the barge breakaway incidents addressed in Petitioners' Complaint and for all such other and further relief as may be just and proper.

PROTECTIVE CLAIM

GEORGIA PACIFIC CONSUMER OPERATIONS LLC ("GPCO") files this Protective Claim pursuant to Admiralty Supplemental Rule F(5) in response to Petitioners BRUCE OAKLEY, INC. and JOHNSTON'S PORT 33 INC. ("Petitioners") Complaint for Exoneration from, or Limitation of, Liability ("Complaint").

Subject Matter Jurisdiction and Venue

1. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. § 1333. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

Personal Jurisdiction

2. GPCO is a foreign corporation with its principal place of business at 4901 Chandler Road, Muskogee, OK 74403.
3. Petitioner Johnston's Port 33 Inc. was and is a corporation duly organized and existing under Oklahoma law, a wholly owned subsidiary of Petitioner Bruce Oakley, Inc., and the owner of the M/V LEGACY, Official No. 1278462. Both Petitioners have appeared in this action and have subjected themselves to this Court's personal jurisdiction.
4. Petitioner Bruce Oakley, Inc. was and is a corporation duly organized and existing under Arkansas law, and the parent company of Johnston's Port 33 Inc.
5. At material times, the *MN* LEGACY was a steel-hulled inland river towboat, Official No. 1278462, used for transportation upon the inland rivers of the United States, including on the Arkansas River and within this Court's jurisdiction.

6. Both Petitioners have appeared in this action and have subjected themselves to this Court's personal jurisdiction and have filed an *ad interim stipulation* for value concerning the M/V LEGACY subjecting the monetary amount identified therein to this Court's jurisdiction.

Background Facts

7. This Court has set a September 30, 2019 deadline for any party to submit a claim against Petitioners arising out of the events set forth in Petitioners' Complaint or face default concerning same.
8. GPCO operates a paper mill on the Arkansas River at 4901 Chandler Road, Muskogee, OK 74403.
9. The paper mill's operation is tied inextricably to the availability of sufficient water on the Arkansas River.
10. Petitioners' vessel M/V LEGACY and its crew twice moored two barges, LTD-11140 and MTC-7255, to shore along the Grand and Arkansas Rivers upstream of GPCO's mill.
11. On May 22, 2019, the two barges and a different tug rigged thereto (together with two other barges) at the time broke free of the moorings on the Grand River and drifted downriver.
12. M/V LEGACY and its crew left a dock along the Arkansas River, captured the two barges, tied them to trees on the riverbank, and apparently left the barges there, instead of maintaining control over them during near record flood/high water conditions.
13. Thereafter, on the evening of May 22, 2019, the two barges broke loose from the trees pulling them from the riverbank and began drifting again downriver. The barges ultimately struck the Webber Falls Lock and Dam on May 23, 2019, sinking the barges with their cargoes.
14. The sunken barges will require salvage operations to remove them from their position against the upriver side of the Webber Falls Lock and Dam.

15. The U.S. Army Corps of Engineers has had to reduce the flow of water along the Arkansas River to enable the salvage and repair operations to safely take place.
16. As a result of the reduced water flow along the Arkansas River, GPCO has undertaken precautionary measures to avoid suffering damage to its mill and its equipment by positioning diesel intake pumps lower in the Arkansas River and obtaining the requisite permits from the U.S.A. Army Corps of Engineers to do so.
17. Presently, the mill has not suffered any physical damage. However, in the event that water levels drop to precipitously low levels, GPCO may suffer physical damage to its clarifier machinery, specifically the rakes contained therein, which separate mud from water. In that event, repair costs would be significant, the mill would shut down, and lost production costs could exceed \$500,000 per day.
18. Because of the Court's September 30, 2019 deadline for filing claims, GPCO submits this protective claim given that salvage and repair operations at Webber Falls Lock and Dam have not concluded, and water levels on the Arkansas River have not been restored to normal levels.

Negligence

19. GPCO asserts a negligence claim against Petitioners for any and all damages suffered by GPCO as a result of the barge breakaways, groundings and damages to the Webber Falls Lock and Dam. Petitioners owed a duty to GPCO and other facilities on the Arkansas River, including the Webber Falls Lock and Dam, to safely operate the M/V LEGACY, which failed to properly moor the two barges at issue and to maintain control over the two barges once M/V LEGACY regained control following the first breakaway. Petitioners also owed a duty to properly train M/V LEGACY's crew for and supervise them during high-water operations, which they failed to do. Petitioners breached their duties, which

caused the physical damages sustained by two barges, as well as the Webber Falls Lock and Dam, and all damages suffered by GPCO as a consequence.

WHEREFORE, GPCO prays that in the event it suffers physical damage to its mill or equipment, that it recover from Petitioners all attendant monetary damages, including economic losses, costs, expenses and available attorney's fees, and for all such other relief as may be just and proper.

Respectfully submitted,

EDMONDS COLE LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants, on this 27TH day of September, 2019.

/s/ Michael Woodson